

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING VARIANCE REPORT (#FZV-15-01)**  
**STEVE AND JUDY PARKER**  
**MAY 19, 2015**

A report to the Flathead County Board of Adjustment regarding a request by Steve and Judy Parker for a variance to the side yard setback requirements found in Section 3.10.040(3)(A) Flathead County Zoning Regulations (FCZR). The variance requested would apply to property located at 365 Caroline Point Road in Lakeside, is zoned "R-2 One Family Limited Residential" and located within the Caroline Point Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on June 2, 2015 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Council.

**B. Board of Adjustment**

This space will contain an update regarding the June 2, 2015 Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Landowner**

Steve and Judy Parker  
28872 Hegegrow  
Mission Viejo, CA 92692

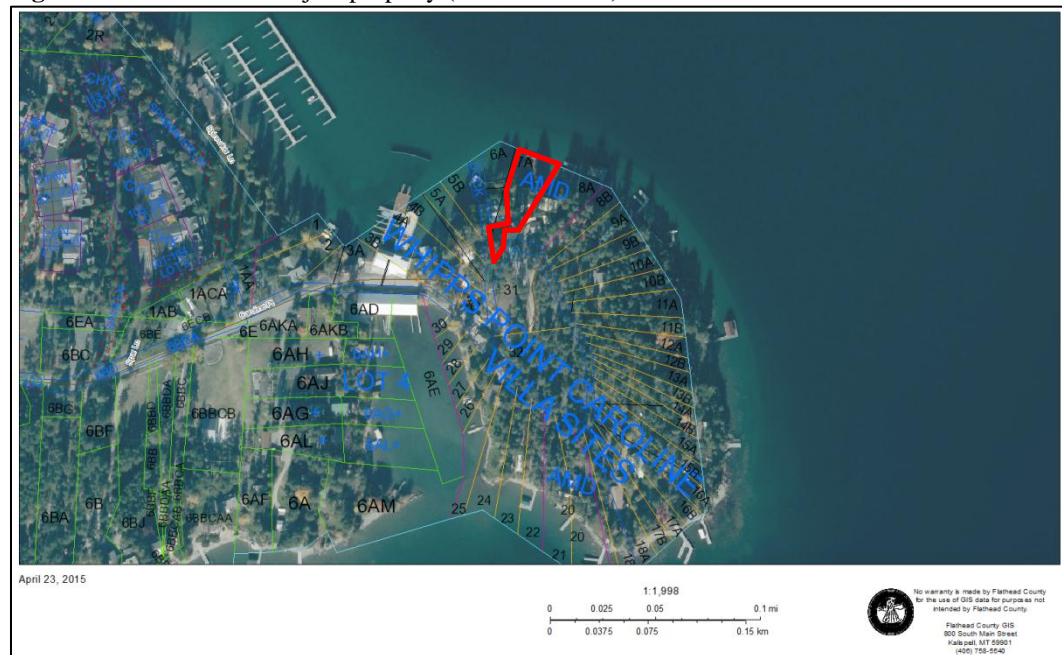
**ii. Technical Representative**

Michael Fraser, P.E.  
690 N Meridian Ste. 103  
Kalispell, MT 59901

**B. Property Location**

The subject property is approximately 0.4 acres in size and is located at 365 Caroline Point Road in Lakeside, MT. The property can be legally described as Lot 7A of AMD Lots 6A, 6B, 7A, 7B and 8A of Whipp's Point Caroline Villa Sites Subdivision in Section 06, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana.

**Figure 1:** Aerial of the subject property (outlined in red)



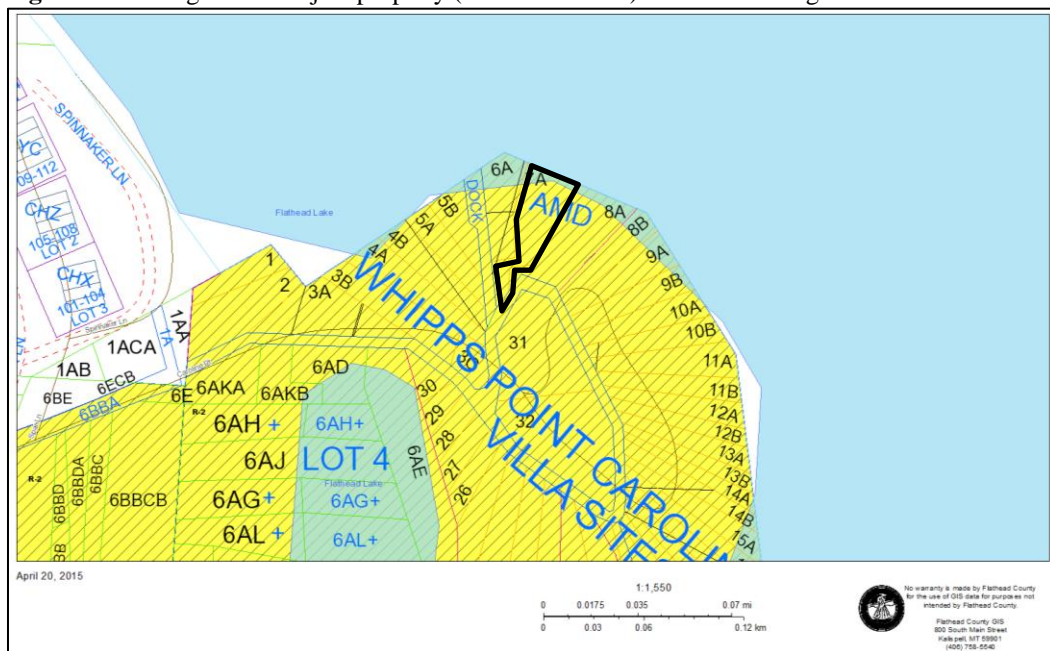
### C. Existing Land Use(s) and Zoning

The subject property is located in the Caroline Point Zoning District and zoned ‘R-2 One Family Limited Residential.’ R-2 is defined as, “A *district to provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines,*” per Section 3.10.010 FCZR. The property contains a dock located on the north side on the lake but is otherwise mostly vacant after the previous house was removed in the Fall of 2014.

### D. Adjacent Land Use(s) and Zoning

The property is located with Flathead Lake directly north of the property. Properties immediately to the south, east, and west of the subject property are zoned similarly zoned “R-2 One Family Limited Residential,” (See Figure 2). The properties to the south, east and west of the subject property are single family residential on lots similar in size to the subject property.

**Figure 2:** Zoning of the subject property (outlined in blue) and surrounding area



#### E. Summary of Request

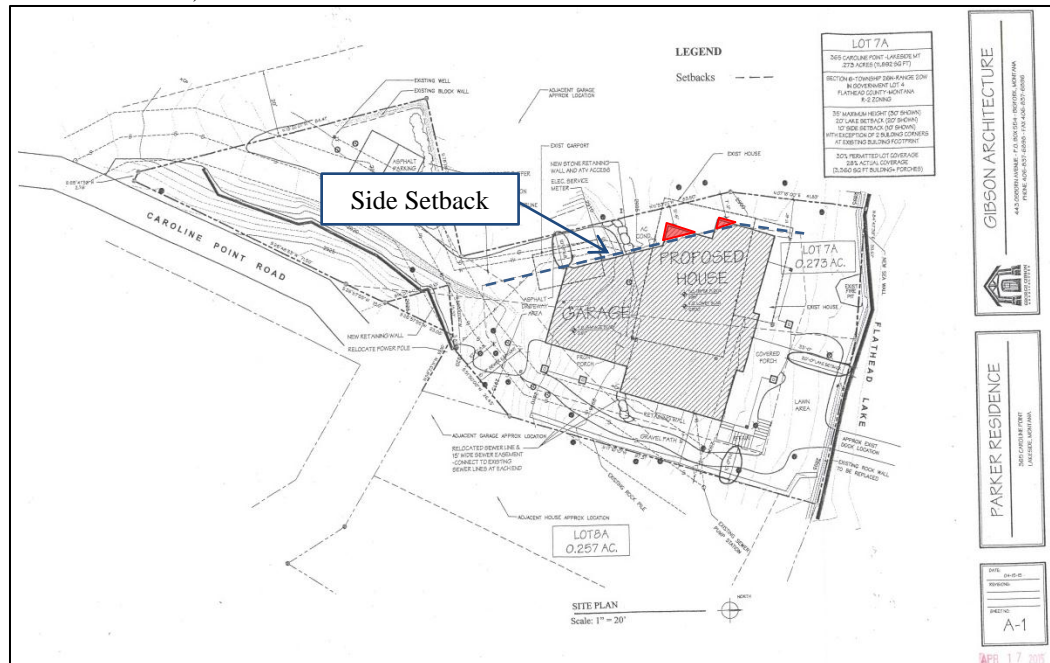
The property previously contained a house that was built within the setbacks but was a legally non-conforming structure as it was constructed prior to the adoption of the zoning district. The previous house was removed in the Fall of 2014. The portion of the house to be located within the setback is within the footprint of the previous non-conforming structure. However, the non-conforming structure was removed more than 180 days ago so any subsequent use of the lot shall be required to be in conformity with the provisions of these regulations, per Section 2.07.020 FCZR. Therefore the applicant is requesting a variance to construct a new house within the side yard setbacks.

The required side setback for the R-2 zone is 10 feet, per Section 3.10.040(3)(A). The application states the reason for the variance as, “The east side of the lot has a required 15 feet access for Lakeside County Water and Sewer to service a sewage pump station. The additional 5 feet easement area over the setback reduces building envelop available for the residence. The requested variance is 4.5 feet with an area of 22.5 square feet and 2.8 feet with an area of 9.62 square feet.” Two corners of the proposed house equaling 22.5 square feet and 9.62 square feet would be located within the side setback if the variance is approved.

**Figure 3: Subject property**



**Figure 4: Proposed house location in relation to side setback (red highlight is portion of building within the setback)**



#### **F. Compliance with Public Notice Requirements**

Notification was mailed to adjacent property owners within 150 feet of the subject property on May 13, 2015 pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the May 17, 2015 edition of the Daily Interlake.

#### **G. Agency Referrals**

Agency referrals were sent to agencies listed below regarding the variance request.

- Lakeside Water and Sewer District
  - Reason: The property is located within the Lakeside Water and Sewer District and has the potential to impact services.
- Somers Fire District
  - Reason: The property is located within the Somers Fire District and has the potential to impact services.
- Flathead City-County Health Department
  - Reason: The property is located within the department's jurisdiction.
- Flathead County Public Works Department
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact county facilities.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Board of Adjustment meeting scheduled for June 2, 2015.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department
  - Comment: This area is all on Lakeside Water and Sewer. Email received May 7, 2015.
- Lakeside Water and Sewer District
  - Comment: "I have come to an acceptable solution to our normal 20' easement with Steve and Judy Parker by giving them a 15' easement and them picking up the expense of relocating our sewer force main pipe. I have no issues with the application." Email received April 23, 2015
- Flathead County Road and Bridge Department
  - Comment: "At this point the County Road Department does not have any comments on this request." Letter dated April 23, 2015.

### **IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states "No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case."

#### **A. Strict compliance with the provisions of these regulations will:**

##### **i. Limit the reasonable use of property;**

Strict compliance with the zoning regulations would not appear to limit the reasonable use of the subject property because the property has according to the applicant 3,700 square feet of buildable area, the site plan

shows the proposed lot coverage of structures to be 3,360 square feet and the proposed house is approximately 2,906 square feet. The house and all proposed structures would be under the total buildable area according to the applicant's calculations.

The subject property is located on Flathead Lake and the rear 20 feet of the property is within the Lakeshore Protection Zone (LPZ). The rear of the proposed structure is anywhere between 9 to 14 feet from the edge of the 20 foot LPZ. The proposed house could be shifted to the north towards the lake 9 feet which would eliminate the need for a variance.

The site plan shows a covered porch to be constructed at the rear of the house. If the structure is shifted back 9 feet, then a portion of the covered porch would need to be removed. A 5 foot wide section of the covered porch in the northeast corner could remain. The applicant would still be allowed to construct the remainder of the porch with natural stone pavers but uncovered with a Lakeshore Construction Permit. This scenario would require no variance for the construction of the structure and would require an administrative Lakeshore Construction Permit. The end result would be a house of the same size shifted north towards the lake 9 feet and a portion of the proposed covered porch being left uncovered. Therefore, it appears that strict compliance with the side setbacks would not limit the reasonable use of the property.

**Finding #1** - Strict compliance with the regulations would not limit the reasonable use of the property because the square footage of the proposed house and other structures is 3,360 square feet, the lot has a buildable area of 3,700 square feet and the proposed house could be shifted 9 feet to the north and be built to the same size as currently proposed with a portion of the proposed covered patio remaining uncovered.

**ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.**

The application states, "This lot is part of a subdivision, Caroline Villa Sites, filed in 1925, Exhibit 1. The lots had 50 feet of lake frontage. The lots as platted are long and narrow, 3:1 ratios or greater. Today most owner ships(sic) include two or more lots, Exhibit 2 (Figure 5 of this report), with the resulting minimum of 100 feet of frontage, or 80 feet of width for a residence. Lots vary from 116 feet to 260 feet deep with a back property line width of 60 to 80 feet per two lots. The combined lot area provides a relatively uniform buildable area much larger than the allowed lot coverage, thus owners have choice on sighting residence. [...]. The available building envelope was reduced from 3,700 square feet compared to the allowable coverage of 3,568 square feet. The Parkers have little choice on selecting a building location, exhibit 4."

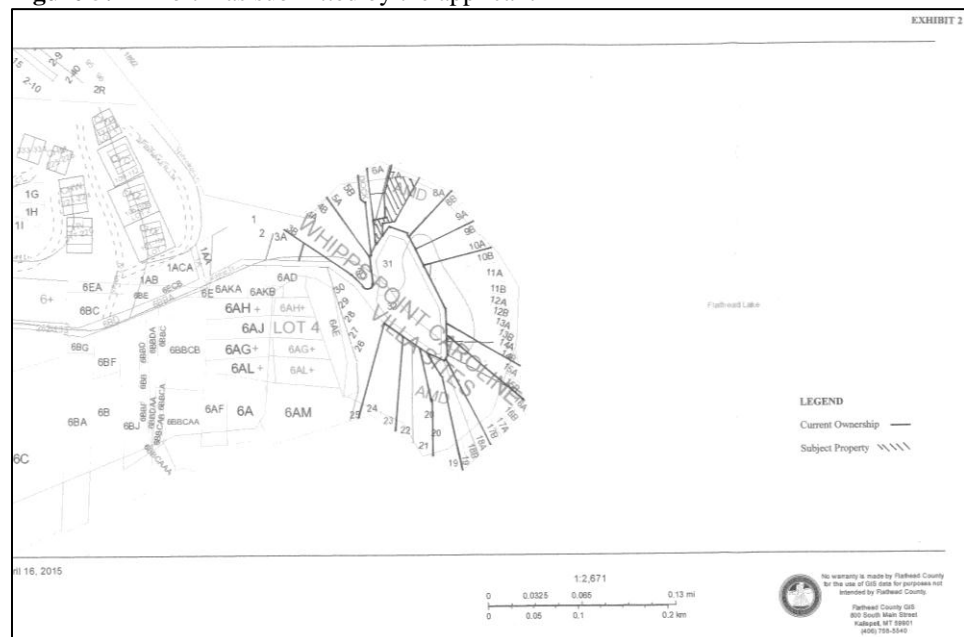
As the applicant states many of the lots within the subdivision and situated on Flathead Lake are a uniform size and shape. The subject property has a 's' bend between the road and the building envelope on the lot. Other



properties located on Flathead Lake are more rectangular in shape and provide for a more natural building envelope (see Figure 5 below).

During the site visit, staff observed that most of the lots in the vicinity of the subject property contain single family houses. Many of the neighboring lots are slightly larger than the subject property but contain smaller houses. A majority of the properties within the subdivision have houses that cover slightly more than 1,000 square feet of the lots and the applicant is proposing to construct a structure that would cover approximately 3,000 square feet of the its lot. Requiring compliance with the 10 foot side setback of the R-2 zoning designation would likely not deprive the applicant a right enjoyed by other properties situated within the same subdivision.

**Figure 5:** Exhibit 2 as submitted by the applicant



It appears alternatives exist which would comply with the side setback requirements for the R-2 zone. The rear of the proposed structure is anywhere between 9 to 14 feet from the edge of the 20 foot LPZ. The proposed house could be shifted north towards the lake 9 feet which would eliminate the need for a variance.

The site plan shows a covered porch to be constructed at the rear of the house. If the structure is shifted back 9 feet, then a portion of the covered porch would need to be removed. A 5 foot wide section of the covered porch in the northeast corner could remain. The applicant would still be allowed to construct the remainder of the porch with natural stone pavers but uncovered with a Lakeshore Construction Permit. This scenario would require no variance for the construction of the structure and would require an administrative Lakeshore Construction Permit. The end result would be a house of the same size shifted north towards the lake 9 feet and a portion of the proposed covered porch being left uncovered.

**Finding #2** - Strict compliance with the regulations would likely not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the proposed house could still be built in compliance with the regulations and the applicant is proposing to construct a house 2,000 square feet larger than many of the other structures in the same subdivision.

**B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.**

The application states, “The lot shape was created in 1989. Lakeside County Water and Sewer constructed the sewer in the mid 80”s (sic) and placed the pump station. Parker’s purchased the lot in 2014. They had no control over the shape, size or topography. Because of the narrow access and slope there are very limited options for accessing the garage, residence and pump station, Exhibit 6.”

The lot has an ‘s’ bend and is not square or rectangular like most lots in the subdivision, the north side is located within the LPZ, steep slopes exist on the south side of the lot and the lot has a 15 foot easement on the east side (see Figure 6). All of these factors serve to reduce the building envelope on the subject property. The alleged hardship appears to be the result of lot shape, topography and other circumstances over which the applicant has no control.

**Finding #3** – The alleged hardship appears to be attributable to the lot shape, topography and other circumstances over which the applicant has no control because the lot is not a typical rectangular or square shape, the north 20 feet of the lot is located within the LPZ, the Lakeside Water and Sewer District has a 15 foot easement on the east side of the property for a sewer lift station and there is a steep slope on the south side of the property near the road.



**Figure 6:** South side of property



**C. The hardship is peculiar to the property.**

According to the application, “No other lot has the unusual shape of Lot 7A.” As previously stated, the lot has an ‘s’ bend and is not square or rectangular like most lots in the subdivision, the north side is located within the LPZ, steep slopes exist on the south side of the lot and the lot has a 15 foot easement on the east side (see Figure 6). All of these factors serve to reduce the building envelope on the subject property.

Many of the other properties located within the Whipps’ Point Caroline Villa Sites Subdivision have a rectangular shape but are also located within the Lake ad Lakeshore Protection Zone with steep slopes. A majority of the neighboring properties do not have a 15 foot easement located along a property line similar to the subject property. The alleged hardship appears to be peculiar to the subject property.

**Finding #4** – The alleged hardship appears to be peculiar to the subject property because even though the neighboring properties are located within the LPZ and have steep slopes, the majority of the lots within the subdivision have a regular shape and do not have a 15 foot easement on one of the property boundaries unlike the subject property.

**D. The hardship was not created by the applicant.**

The application states, “The applicant, Steve and Judy Parker, purchased the lot in 2014. The Amended Plat creating the current lot boundaries was completed in

1989. Buildable land was added to 6A and subtracted from 7A, by the 1989 survey, creating the specific hardship.”

As previously stated, the lot has an ‘s’ bend and is not square or rectangular like most lots in the subdivision, the north side is located within the LPZ, steep slopes exist on the south side of the lot and the lot has a 15 foot easement on the east side (see Figure 6). All of these factors serve to reduce the building envelope on the subject property. The alleged hardship does not appear to have been created by the applicant.

**Finding #5** – The alleged hardship does not appear to be created by the applicant because the lot is not a typical rectangular or square shape, the north 20 feet of the lot is located within the LPZ, the Lakeside Water and Sewer District has a 15 foot easement on the east side of the property for a sewer lift station and there is a steep slope on the south side of the property near the road.

**E. The hardship is not economic (when a reasonable or viable alternative exists).**

It appears alternatives exist which would comply with the side setback requirements for the R-2 zone. The rear of the proposed structure is anywhere between 9 to 14 feet from the edge of the 20 foot LPZ. The proposed house could be shifted north towards the lake 9 feet which would eliminate the need for a variance. The application states, “Complying with the 10 foot side yard setback limits the owner’s use of the property, limiting use and enjoyment available to other owners in the District. This limitation or hardship is not economic.”

The site plan shows a covered porch to be constructed at the rear of the house. If the structure is shifted back 9 feet, then a portion of the covered porch would need to be removed. A 5 foot wide section of the covered porch in the northeast corner could remain. The applicant would still be allowed to construct the remainder of the porch with natural stone pavers but uncovered with a Lakeshore Construction Permit. This scenario would require no variance for the construction of the structure and would require an administrative Lakeshore Construction Permit. The end result would be a house of the same size shifted north towards the lake 9 feet and a portion of the proposed covered porch being left uncovered.

**Finding #6** – A reasonable or viable alternative appears to exist because the house has not been constructed, could be built 9 feet further north than is proposed which would eliminate a portion of the covered porch and it would still allow for an unhindered 15 foot easement.

**F. Granting the variance will not adversely affect the neighboring properties or the public.**

The application states, “This request is for an encroachment of 4.5 feet and 2.8 feet into the side yard setback, 31.5 square feet, significantly less than the encroachment which had been present since the survey of 1989 was recorded.”

The houses within the subdivision are located on small lots and the applicant is proposing to build a structure that would cover most of the buildable area on the lot as well as into the side setbacks. Our office has fielded a few phone calls from

neighbors with concerns over the construction of the structure on this property. However, at the time of this report no complaints or written comments have been received.

**Finding #7** – Granting of the variance request would not appear to have a significant impact on neighboring properties or the public because even though staff has received phone calls from concerned neighbors no written comments or complaints have been submitted.

**G. The variance requested is the minimum variance which will alleviate the hardship.**

The application states, “The requested variance is minimal 4.5 feet and 2.8 feet and only involves two corners of the residence. If a 15 foot easement area was not needed by the Sewer District, if access wasn’t needed to the pump station, if the garage was not so narrow and if access wasn’t needed by the owners to the Lake, the house could be moved 5 feet and eliminate the encroachment. The 15 feet wide access is important to the Sewer District, but also the owner. Mrs. Parker has arthritis. She must use an ATV to access the lake, a gravel path is shown on the site plan for this purpose.”

It appears one alternative exist which would not require a variance to the side setback requirements for the R-2 zone which would not alter the gravel path or the 15 foot easement to the water and sewer district as shown on the site plan. As previously stated, the rear of the proposed structure is anywhere between 9 to 14 feet from the edge of the 20 foot LPZ. The proposed house could be shifted north towards the lake 9 feet which would eliminate the need for a variance.

The site plan shows a covered porch to be constructed at the rear of the house. If the structure is shifted back 9 feet, then a portion of the covered porch would need to be removed. A 5 foot wide section of the covered porch in the northeast corner could remain. The applicant would still be allowed to construct the remainder of the porch with natural stone pavers but uncovered with a Lakeshore Construction Permit. This scenario would require no variance for the construction of the structure and would require an administrative Lakeshore Construction Permit. The end result would be a house of the same size shifted north towards the lake 9 feet and a portion of the proposed covered porch being left uncovered. The shifting of the house to the north would not impact the 15 feet easement requested by the Lakeside Water and Sewer District to access the pump station nor would the gravel path for ATV access to lake be impacted.

**Finding #8** – The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because the house could be constructed 9 feet further north which would reduce the covered area of the patio not impact the gravel path for the ATV or the sewer line easement and no variance would be required.

**H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.**

The applicant stated, “Other properties in the District, due to site constraints, could have a similar constraints could make application for a variance as needed

to alleviate the hardship. The property to the west made a similar application for a variance in 2013. Thus, other properties, in the district, have received similar considerations. Granting the variance would be consistent with the prior variance in the District.”

The variance the applicant is referencing (FZV-13-02) was to the front setback and was to allow for the expansion of an existing non-conforming structure. The variance request on the subject property is for new construction as the previously non-conforming structure was removed in the Fall of 2014 and the non-conforming status was lost as it has been longer than 180 days since the old structure was removed.

During the site visit, staff observed that most of the lots in the vicinity of the subject property contain single family houses. A majority of the properties within the subdivision have houses that cover slightly more than 1,000 square feet of the lot and the applicant is proposing to construct a structure that would cover approximately 3,000 square feet of the subject property. If the variance is granted to the side setback of 10 feet it would likely confer a special privilege that is denied similar properties within the same subdivision.

**Finding #9** – Granting of the variance would likely confer a special privilege that is denied to other properties in the district because the house being proposed covers 2,000 square feet more of the lot than other structures on neighboring lots and the variance granted to the neighboring lot was for an addition to a non-conforming structure while this variance request is for a newly constructed structure.

## **V. SUMMARY OF FINDINGS**

1. Strict compliance with the regulations would not limit the reasonable use of the property because the square footage of the proposed house and other structures is 3,360 square feet, the lot has a buildable area of 3,700 square feet and the proposed house could be shifted 9 feet to the north and be built to the same size as currently proposed with a portion of the proposed covered patio remaining uncovered.
2. Strict compliance with the regulations would likely not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the proposed house could still be built in compliance with the regulations and the applicant is proposing to construct a house 2,000 square feet larger than many of the other structures in the same subdivision.
3. The alleged hardship appears to be attributable to the lot shape, topography and other circumstances over which the applicant has no control because the lot is not a typical rectangular or square shape, the north 20 feet of the lot is located within the LPZ, the Lakeside Water and Sewer District has a 15 foot easement on the east side of the property for a sewer lift station and there is a steep slope on the south side of the property near the road.
4. The alleged hardship appears to be peculiar to the subject property because even though the neighboring properties are located within the LPZ and have steep slopes, the majority of the lots within the subdivision have a regular shape and do

not have a 15 foot easement on one of the property boundaries unlike the subject property.

5. The alleged hardship does not appear to be created by the applicant because the lot is not a typical rectangular or square shape, the north 20 feet of the lot is located within the LPZ, the Lakeside Water and Sewer District has a 15 foot easement on the east side of the property for a sewer lift station and there is a steep slope on the south side of the property near the road.
6. A reasonable or viable alternative appears to exist because the house has not been constructed, could be built 9 feet further north than is proposed which would eliminate a portion of the covered porch and it would still allow for an unhindered 15 foot easement.
7. Granting of the variance request would not appear to have a significant impact on neighboring properties or the public because even though staff has received phone calls from concerned neighbors no written comments or complaints have been submitted.
8. The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because the house could be constructed 9 feet further north which would reduce the covered area of the patio not impact the gravel path for the ATV or the sewer line easement and no variance would be required.
9. Granting of the variance would likely confer a special privilege that is denied to other properties in the district because the house being proposed covers 2,000 square feet more of the lot than other structures on neighboring lots and the variance granted to the neighboring lot was for an addition to a non-conforming structure while this variance request is for a newly constructed structure.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a variance to allow for a structure to be constructed within the side yard setback is not supported by the review criteria and the Findings of Fact listed above. Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application and the request does not appear to have met all the review criteria.

Planner: EKM